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No. 994

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967

SHIRELEY JEAN ESTES; LISHA DAWN ESTES; SHAWNA ANNETTE ESTES AND DAVID LAIRD ESTES,

Petitioners,

v.

CAMDEN FIRE INSURANCE ASSOCIATION OF GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION LIMITED; STATE AUTOMOBILE MUTUAL INSURANCE COMPANY; FRANK M. GUSWEILER; STATE OF OHIO AND UNITED STATES OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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In The

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SHIRELEY JEAN ESTES; LISHA DAWN ESTES; SHAWNA ANNETTE ESTES AND DAVID LAIRD ESTES,

Petitioner,

v.

CAMDEN FIRE INSURANCE ASSOCIATION OF GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION LIMITED; STATE AUTOMOBILE MUTUAL INSURANCE COMPANY; FRANK M. GUSWEILER; STATE OF OHIO AND UNITED STATES OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit made and entered in the above-entitled case on October 10, 1967.

OPINION BELOW

A memorandum opinion and order by the United States District Court for the Southern District of Ohio, Western Division made and filed July 6, 1966, is set out in the Appendix B at page 34. Same is unreported.

The order of United States Court of Appeals for the Sixth Circuit affirming the judgment of the District Court is set out in the Appendix C at page 37.

JURISDICTION

A memorandum opinion and order of the United States District Court dismissing petitioners' complaint was entered on July 6, 1966.

The order of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the District Court was made and entered on October 10, 1967.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3). Questions under the Federal Constitution and Laws are involved.

QUESTION PRESENTED

1. Did the District Court err in dismissing the petitioners' Complaint for the reason that the said Complaint failed to state a claim upon which relief could be granted?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Citations of the Constitutional Provisions and Statutes involved are set forth as follows:

Constitutional Provisions:

Section I, Fourteenth Amendment, U. S. Constitution.

Section 4, Article IV, U. S. Constitution.

Article VI (2), U. S. Constitution.

Statutes and Rules:

Federal Civil Rights Act of 1871, 42 U. S. Code Section 1983.

Federal Rules of Civil Procedure, Rule 8 (e).

Federal Rules of Civil Procedure, Rule 20.

McCarran-Ferguson Insurance Regulation Act, 15 U. S. Code Sections 1011 to 1015 inclusive.

Their pertinent text is set forth in Appendix A page 30.

STATEMENT OF THE CASE

The petitioners' complaint was filed in The United States District Court, Southern District of Ohio, Western Division on April 20, 1966.

It reads as follows:

In the

UNITED STATES DISTRICT COURT
Southern District of Ohio, Western Division

Civil Action No. 6137

Shireley Jean Estes, 3082 Madison Road, Cincinnati, Ohio, and

Lisha Dawn Estes, a minor, age 3 years by Shireley Jean Estes, her mother and next friend, 3082 Madison Road, Cincinnati, Ohio, and

Shawna Annette Estes, a minor, age 7 years by Shireley Jean Estes, her mother and next friend, 3082 Madison Road, Cincinnati, Ohio, and

David Laird Estes, a minor, age 9 years by Shireley Jean Estes, his mother and next friend, 3082 Madison Road, Cincinnati, Ohio,

Plaintiffs,

vs.

Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation, Limited, 1404 Carew Tower, Cincinnati, Ohio, and

State Automobile Mutual Insurance Co., Enquirer Building, Cincinnati, Ohio, and

Frank M. Gusweiler, Common Pleas Court Room 10, Hamilton County Court House, Cincinnati, Ohio, and

James V. Rhodes, Governor of the State of Ohio, State of Ohio, Columbus, Ohio, and

Nicholas Katzenbach, Attorney General of the United States of America, The United States of America, Washington, District of Columbia,

Defendants.

COMPLAINT

(Filed April 20, 1966)

Plaintiffs request a statutory three judge Court be convened under 28 United States Code Sections 2281 and 2284 for the purpose of hearing this case and determining the facts and the appropriate relief.

1. Plaintiffs state that they are citizens of the United States of America and residents of Hamilton County, Ohio, and the State of Ohio; that their action arises under the constitution of the United States and particularly the Fourteenth Amendment, Section I, under the constitution of the United States Article IV, Sections I and II, under the constitution of the United States Article VI, under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the Statutes of the State of Ohio, Sections 3937.01 through 3937.99 Ohio Revised Code and all other related sections of Title 39 of the Ohio Insurance Law that relate to Casualty Insurance and Motor Vehicles Insurance are unconstitutional, null, void and of no effect because they violate the provisions of the constitution of the United States of America; that the

Public Law 15, Title 15, United States Code Sections 1011 to 1015 inclusive known also as McCarran-Ferguson Insurance Act is unconstitutional, null, void and of no effect as it violates the laws and provisions of the constitution of the United States Article IV Section I and II, Article VI, Fourteenth Amendment Section I, Federal Civil Rights Act of 1871, 42 United States Code Section 1983. The matter in controversy exceeds, exclusive of interest and costs the sum of ten thousand dollars.

First Count

1. As the First Count of this complaint against the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited, the plaintiff Shireley Jean Estes states that on December 20, 1962, she was seriously injured by one Stanley Harry Seigla, while he was in the act of violating a traffic statute of the State of Ohio; that said Stanley Harry Seigla was insured under a liability insurance policy issued to him by the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited, which is licensed to do business under the unconstitutional Casualty Insurance and the unconstitutional Motor Vehicle Insurance laws of Ohio, Sections 3937.01 through 3937.99 Ohio Revised Code and other unconstitutional Sections of Title 39 of the Ohio Insurance Law that relates to Casualty Insurance and Motor Vehicle Insurance; that the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited knew or should have known that their insured Stanley Harry Seigla, was liable for the serious injuries sustained by the plaintiff Shireley Jean Estes, and caused by the said Stanley Harry Seigla, as a matter of law; that the defendant Camden Fire Insurance

Association of General Accident Fire and Life Assurance Corporation Limited acted in bad faith and unlawfully refused to allow plaintiff Shireley Jean Estes to recover fair and reasonable compensation for her injuries from the said Stanley Harry Seigla; that the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited intentionally and maliciously and in bad faith acted improperly under color of insurance laws of the State of Ohio, which are unconstitutional and repugnant to the Constitution of the United States of America, Fourteenth Amendment, Section I, and in so acting caused the deprivation of rights guaranteed to plaintiff Shireley Jean Estes, by the Constitution of the United States of America, Fourteenth Amendment Section I, and the Federal Civil Rights Act of 1871, 42 United States Code, Section 1983; that the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited caused the deprivation of plaintiff Shireley Jean Estes' rights of freedom to contract with the said wrongdoer and real party in interest, Stanley Harry Seigla; that the acts of defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited caused the contracts and Quasi contracts of plaintiff Shireley Jean Estes to be impaired; thereby said plaintiff's rights under the Constitution of the United States Fourteenth Amendment Section I were violated; that the improper acts of the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited toward the plaintiff Shireley Jean Estes, Lisha Dawn Estes, Shawna Annette Estes and David Laird were cruel and inhuman and in violation of their rights under the Federal Civil Rights act of 1871, 42 United States Code Section 1983; that the unlawful wrongful acts of the defendant Camden Fire Insurance Association

of General Accident Fire and Life Assurance Corporation Limited toward the plaintiffs caused the plaintiffs to suffer mentally and physically and to be damaged.

2. Plaintiffs state that defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited has acted with defendant State Automobile Mutual Insurance Company and other insurance companies to create a monopoly in legal processes of the State of Ohio in violation of plaintiffs rights guaranteed by the Constitution of the United States of America and by the laws passed by the state and Federal Government, and to plaintiffs damage.

3. Plaintiffs state that the said defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited insurer of one Stanley Harry Seigla a tortfeasor who injured plaintiff Shireley Jean Estes on 12/20/63, conspired with the defendant State Automobile Insurance Company insurer of one Iris E. Sebastian, a tortfeasor who injured plaintiff Shireley Jean Estes on 1/5/63, intentionally and maliciously to defraud plaintiffs; that the said defendants acted jointly and in bad faith against the plaintiffs; that said defendants wrongfully shared information and materials together, wrongfully delayed plaintiff's day in Court together; wrongfully refused to be joined as parties, all in bad faith and unlawfully to cheat plaintiffs; that said defendants in bad faith shifted the blame to each other by agreement, when said defendants knew they were responsible for substantial damage individually; that plaintiffs have been damaged by the conspiracy of the said defendants to defraud them and because of the conspiracy plaintiffs have suffered from the lack of food, shelter and clothing and proper medical attention; that plaintiffs have suffered physically and mentally because of the said conspiracy in viola-

tion of plaintiffs rights under the Constitution of the United States Fourteenth Amendment Section I and under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983.

Second Count

1. As and for a further and Second Count of this complaint and against the defendant State Automobile Mutual Insurance Company the plaintiffs, allege, replead as though set forth at length, each and every, all and singular the allegations of the First Count herein.

2. Plaintiff Shireley Jean Estes, states that on January 5, 1963 she was suffering from a serious injury of December 20, 1962 and returning home from purchasing a medical appliance for said injury when one Iris E. Sebastian, violating a traffic statute of the State of Ohio, caused the said plaintiff to be injured seriously; that said Iris E. Sebastian, was insured under a liability insurance policy issued by the defendant State Automobile Mutual Insurance Company; that said defendant was licensed to do business under the unconstitutional Casualty Insurance and the unconstitutional Motor Vehicle Insurance Laws of Ohio, Sections 3937.01 through 3937.99 Ohio Revised Code and other related Sections of Title 39 of the Ohio Insurance law that relates to Casualty Insurance and Motor Vehicle Insurance, all of which are unconstitutional and repugnant to the Federal Constitution and laws; that the defendant State Automobile Mutual Insurance Company knew or should have known that their insured Iris E. Sebastian, was liable for the serious injuries sustained by plaintiff Shireley Jean Estes, and caused by Iris E. Sebastian, as a matter of law; that the defendant State Automobile Insurance Company knew or should have known that the injuries to the plaintiff Shireley Jean Estes were

serious and were caused by their insured Iris E. Sebastian's negligence; that the defendant State Automobile Mutual Insurance Company acted in bad faith and refused to allow plaintiff Shireley Jean Estes to recover fair and reasonable compensation for her injuries from the said Iris E. Sebastian; that the defendant State Automobile Mutual Insurance Company intentionally, maliciously and in bad faith acted improperly under color of insurance laws of the State of Ohio, which laws are unconstitutional and repugnant to the Constitution of the United States of America Fourteenth Amendment Section I, that the said defendant in so acting under said unconstitutional laws caused a deprivation of the rights guaranteed to the plaintiff Shireley Jean Estes and her plaintiff children by the constitution of the United States of America, Fourteenth Amendment Section I, and the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the defendant State Automobile Mutual Insurance Company, acting under said unconstitutional laws caused a deprivation of the plaintiff Shireley Jean Estes' rights of freedom to contract with the said wrongdoer and the real party in interest Iris E. Sebastian; that the acts of the said defendant, State Automobile Mutual Insurance Company, under the said unconstitutional laws, caused the impairment of plaintiff Shireley Jean Estes contracts and Quasi contracts; thereby said plaintiffs rights under the constitution of the United States Fourteenth Amendment Section I were violated, also plaintiffs rights were violated under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the improper acts of the defendant State Automobile Mutual Insurance Company toward the plaintiffs Shireley Jean Estes, Lisha Dawn Estes, Shawna Annette Estes, David Laird Estes, were cruel and inhuman, and in violation of plaintiffs rights under the equal protection

clause of the constitution of the United States of America Fourteenth Amendment, Section I and under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the wrongful acts of the defendant State Automobile Mutual Insurance Company toward the plaintiffs caused them to suffer mentally and physically and to be damaged.

3. Plaintiffs state that defendant State Automobile Mutual Insurance Company has acted with Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited and other insurance companies to create a monopoly of the legal processes of the State of Ohio in violation of plaintiffs' rights guaranteed by the laws and Constitution of United States of America and to the damage of the plaintiffs.

4. Plaintiffs state that the said defendant State Automobile Mutual Insurance Company, insurer of Iris E. Sebastian a tortfeasor who injured Shireley Jean Estes on January 5, 1963 conspired with the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation insurer of Stanley Harry Seigla a tortfeasor who injured Shireley Jean Estes on December 20, 1962, to intentionally and maliciously to defraud plaintiffs; that the said defendants acted jointly and in bad faith against the plaintiffs; that said defendants wrongfully planned together, wrongfully have shared materials and information together, wrongfully delayed plaintiffs day in Court together, wrongfully refused to be joined as parties, all in bad faith to unlawfully cheat plaintiffs; that said defendants in bad faith shifted the blame to each other by agreement when said defendants knew they were responsible for substantial damages individually; that the plaintiffs have been damaged by the conspiracy of the defendants to defraud them and because

of the conspiracy plaintiffs have suffered from the lack of food, shelter and clothing and medical attention and plaintiffs have suffered and have been damaged mentally and physically; and the plaintiffs rights were violated under the Constitution of the United States Fourteenth Amendment Section I and under the Federal Civil Rights Act of 1871, 42 United States Code, Section 1983.

Third Count

1. As and for a further and Third Count of the complaint against the defendant Frank M. Gusweiler, plaintiffs allege replead as though set forth at length, each and every, all and singular the allegations of the First and Second Counts, herein.

2. Plaintiffs state that Frank M. Gusweiler, under color of statute, ordinances, customs and usage of the State of Ohio, caused damages to the plaintiffs, because the said defendant intentionallly and maliciously deprived the plaintiffs of their rights under the Constitution of the United States of America Fourteenth Amendment Section I and under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the defendant Frank M. Gusweiler wrongfully, actively and intentionally aided the conspiracy between the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited and State Automobile Mutual Insurance Company to cheat plaintiffs and plaintiffs have suffered mentally and physically and have been damaged because of the wrongful, unlawful, cruel acts of the defendant Frank M. Gusweiler, Ohio Common Pleas Court Judge.

Fourth Count

1. As and for a further and Fourth Count of this complaint against the defendant, James V. Rhodes, Gov-

ernor of the State of Ohio, plaintiffs allege, replead as though set forth at length, each and every all and singular the allegations of the First, Second, Third Counts, herein.

2. Plaintiffs Shireley Jean Estes, Lisha Dawn Estes, Shawna Annette Estes, and David Laird Estes say that the State of Ohio has passed laws and maintains said laws which have permitted the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited and State Automobile Mutual Insurance Company to conduct business in a manner that is in violation of the said plaintiffs rights under the Constitution of the United States of America Fourteenth Amendment Section I; and their rights under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the insurance laws under Ohio Title 39 of the State of Ohio are unconstitutional under the Constitution of the United States Fourteenth Amendment Section I, because the said laws permit and encourage the said defendant insurance companies, who are not the real parties in interest, to interfere with the normal dealing and contracts between the plaintiff Shireley Jean Estes and Stanley Harry Seigla and between plaintiff Shireley Jean Estes and Iris E Sebastian who are the real parties in interest, and is in violation of plaintiffs rights under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983. That the State of Ohio has passed insurance laws under Title 39 and maintained said unconstitutional laws that have caused an impairment of the contracts of plaintiff Shireley Jean Estes; that the laws of the State of Ohio have permitted the said defendant insurance companies to impair Quasi Contracts between plaintiff Shireley Jean Estes and Stanley Harry Seigla and between plaintiff Shireley Jean Estes and Iris E. Sebastian in violation of plaintiff's rights under the constitution of the United States of America Fourteenth Amendment Sec-

tion I; that the State of Ohio has passed unconstitutional laws and maintains said laws which harbor and protect traffic violators and these said laws have harbored and protected the traffic violating tort feasors Stanley Harry Seigla and Iris E. Sebastian, and have permitted the defendants Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited and the defendant State Automobile Mutual Insurance Company to step into the matter and to oppress the innocent victim, plaintiff Shireley Jean Estes, who was twice injured seriously by the said tort feasors, that her rights under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983 are violated; that the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited and defendant State Automobile Mutual Insurance Company have been permitted to inflict inhuman and cruel treatment upon the plaintiffs by the said laws of the State of Ohio, which are unconstitutional and in violation of the plaintiffs rights under the constitution of the United States of America, Fourteenth Amendment Section I and in violation of the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the State of Ohio has wrongfully permitted the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited and State Automobile Mutual Insurance Company to use money paid by the premiums of policy holders to protect in bad faith the traffic violating tortfeasors, Stanley Harry Seigla and Iris E. Sebastian and to prevent the plaintiff Shireley Jean Estes from recovering fair and just compensation from the said tortfeasors for her injuries caused by the said tortfeasors negligence, in violation of plaintiff Shireley Jean Estes rights under the equal protection clause of the Constitution of the United States of America, Four-

teenth Amendment, Section I, and under the Federal Civil rights Act of 1871, 42 United States Code Section 1983; that the said unconstitutional laws of the State of Ohio wrongfully protect the law violators Stanley Harry Seigla and Iris E. Sebastian and wrongfully prevent the plaintiff who was an innocent victim of the negligence of said law violators from recovering for her damages caused by the said law violators and by wrongfully allowing the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited and State Automobile Mutual Insurance Company to back the said law violator with the vast sums of money and legal defenses obtained from the money paid into public trust by many law abiding citizens, violates the rights of plaintiff Shireley Jean Estes under the equal protection clause of the Constitution of United States Fourteenth Amendment, Section I, and the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the State of Ohio has passed unconstitutional insurance laws under Title 39 and maintains said laws to encourage murder and crippling by motor by protecting the guilty Stanley Harry Seigla and Iris E. Sebastian and by allowing the said insurance laws to oppress the innocent plaintiff Shireley Jean Estes, Lisha Dawn Estes, Shawna Annette Estes, and David Laird Estes, at the hands of the said defendant insurance companies, in violation of plaintiff Shireley Jean Estes rights under the equal protection clause of the constitution of United States of America, Fourteenth Amendment Section I, and under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the State of Ohio by unconstitutional insurance laws have permitted taxation without representation, that is, by permitting the said defendant insurance companies to use funds paid into their com-

panies by the innocent to be used against the innocent Shireley Jean Estes to protect the traffic violators Stanley Harry Seigla and Iris E. Sebastian; that the State of Ohio has permitted said insurance laws which are unconstitutional to be used and applied within the Courts of Ohio to oppress the plaintiffs and cause inhuman and cruel treatment and damage to the plaintiffs.

Fifth Count

1. As and for a further and Fifth Count of this complaint and against the defendant, Nickolas Katzenbach, the Attorney General of the United States of America, plaintiffs allege, replead, as set forth at length, each and every all and singular the allegations of the First, Second, Third and Fourth Counts of this complaint, herein.

2. Plaintiffs Shireley Jean Estes, Lisha Dawn Estes, Shawna Annette Estes, and David Laird Estes, state that they have been deprived of their rights guaranteed by the Constitution of the United States of America, under the Fourteenth Amendment Section I; under the Constitution of the United States of America under Article IV Section I and II; under Article VI and under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that plaintiffs rights guaranteed by the Constitution of the United States of America are denied because of the unconstitutional public law 15, Title 15, United States Code Section 1011 to 1015 inclusive; that because of the said unconstitutional law generally referred to as the McCarran-Ferguson Insurance Act the plaintiffs have been denied their freedom to travel within all the states of the United States of America because plaintiff would be injured by the unconstitutional insurance laws casualty insurance laws, motor vehicle insurance laws of all of the

states because of the McCarran-Ferguson Insurance Act; that the said McCarran-Ferguson Insurance Act is illegal, unconstitutional and void in that it purports to authorize defendants insurance companies and other insurance companies and to create and maintain a monopoly of the legal processes of the State Courts of Ohio and other States involved with personal injury cases contrary to Article I Section 16, of the Constitution of the State of Ohio and contrary to the Constitution of the United States of America, Fourteenth Amendment, Article I, that all of the States of the United States of America have passed and have maintained liability insurance laws, casualty insurance laws and motor vehicle insurance laws that are unconstitutional because said laws permit the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporated Limited and defendant State Automobile Mutual Insurance Company and others to use funds paid as premiums by many innocent law abiding citizens to protect the wrongdoer traffic violators Stanley Harry Seigla and Iris E. Sebastian and others and to oppress the plaintiffs who were innocent law abiding citizens and who were injured and damaged by said Stanley Harry Seigla and said Iris E. Sebastian, in violation of plaintiffs rights under the Fourteenth Amendment of the Constitution of the United States and under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the defendant Nickolas Katzenbach, the Attorney General of the United States of America permits the unconstitutional insurance laws of the State of Ohio and the unconstitutional insurance laws of all of the other States of the United States of America to force taxation without representation upon the plaintiffs and others; that the defendant Nickolas Katzenbach, Attorney General of United States of America refuses to take the proper action and control of the insurance business as re-

quired by the Constitution of the United States of America to give the rights to plaintiffs and others that are guaranteed by the constitution of the United States of America Fourteenth Amendment, Section I; under the equal protection clause, and under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the defendant United States of America, Nickolas Katzenbach, Attorney General, allows the unconstitutional McCarran-Ferguson Insurance Acts, Public Law 15, Title 15 United States Code Sections 1011 to 1015 inclusive to improperly stand in the path of proper control and supervision of the interstate insurance business which can only be governed constitutionally by the Federal Government; that the said unconstitutional, wicked, McCarran-Ferguson Insurance Act was improperly passed by the legislature and approved March 9, 1945 during World War II; that the disgraceful McCarran-Ferguson Insurance Act was passed in an underhanded manner because it was promoted and lobbied for by a group of men who were not working in the best interest of our country, but during the time when the cream of the crop of the men of our nation were fighting the enemies in Europe and the Pacific; these enemies of our freedom within our country at home were hard at work scheming and planning oppression of the Americans who survived by passing the said McCarran-Ferguson Insurance Act; that it is impossible to have individual States control interstate insurance business as the unconstitutional McCarran-Ferguson Insurance Act would suggest and therefore plaintiffs rights guaranteed by the Constitution of the United States of America and by the Federal Civil Rights Acts of 1871, 42 United States Code Section 1983 have been violated; that the unconstitutional law of the United States of America, known as the McCarran-Ferguson Insurance Act and the unconstitutional insurance laws of the State of Ohio give

the traffic violators a license to kill, cripple and damage for the price of a liability insurance premium; and the McCarran-Ferguson Insurance Act stands in the way of proper control; that the traffic violators Stanley Harry Seigla and Iris E. Sebastian did cripple and damage the plaintiff Shireley Jean Estes that the said plaintiff has been required to pay bills caused by the said traffic violators; that said plaintiff has been required to bear the burden of the injuries sustained by her and caused by the defendants; that plaintiffs road to Court to obtain fair and reasonable compensation for the injuries caused by Stanley Harry Seigla and Iris E. Sebastian has been made long and hard by the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited and defendant State Automobile Mutual Insurance Company, with money paid into public trust by the public to compensate plaintiff and not to oppress and destroy her; that the traffic violators Stanley Harry Seigla and Iris E. Sebastian have been protected by the insurance laws in violation of plaintiffs rights under the Constitution of the United States Fourteenth Amendment Section I and under the Federal Civil Rights Act of 1871, 42 United States Code Section 1983.

Sixth Count

1. As and for a further and Sixth Count of the complaint against all of the defendants, plaintiffs allege, replead, as though set forth at length, each and every all and singular the allegations of the First, Second, Third, Fourth and Fifth Counts, herein.

2. Plaintiffs Shireley Jean Estes, Lisha Dawn Estes, Shawna Annette Estes, David Laird Estes state that the

acts of commission and acts of omission of the said defendants have caused damage to them in pain and have caused them to suffer mentally and physically; that the acts of commission and acts of omission of the said defendants have caused the following to wit:

A. Increase of murder and crippling by motor, including Shireley Jean Estes, the plaintiff, being crippled twice.
B. Increase of poverty by preventing the innocent plaintiffs from recovering adequate compensation from the wrongdoer.
C. The backlog of cases in the Courts across our nation, including plaintiff Shireley Jean Estes' cases.
D. Encourages litigation because injured innocent persons, including the plaintiff Shireley Jean Estes are forced to file suit.
E. Encourages negligence.
F. Promotes a monopoly of the legal processes across our nation and plaintiff Shireley Jean Estes has been a victim of same.

WHEREFORE, plaintiff Shireley Jean Estes prays Judgment against the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited for the sum of One Hundred Thousand Dollars ($100,000.00) for compensatory damages upon this complaint; plaintiff Shireley Jean Estes prays judgment against the defendant State Automobile Mutual Insurance Company for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint; plaintiff Shireley Jean Estes prays judgment against the defendant Frank M. Gusweiler for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint.

Plaintiff Lisha Dawn Estes prays judgment against the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint; plaintiff Lisha Dawn Estes prays judgment against the defendant State Automobile Mutual Insurance Company for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint; plaintiff Lisha Dawn Estes prays judgment against the defendant Frank M. Gusweiler for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint.

Plaintiff Shawna Annette Estes prays judgment against the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint; plaintiff Shawna Annette Estes prays judgment against the defendant State Automobile Mutual Insurance Company for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint; plaintiff Shawna Annette Estes prays judgment against the defendant Frank M. Gusweiler for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint.

Plaintiff David Laird Estes prays judgment against the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint; plaintiff David Laird Estes prays judgment against the defendant State Automobile Mutual Insurance Company for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint; plaintiff David

Laird Estes prays judgment against the defendant Frank M. Gusweiler for the sum of One Hundred Thousand Dollars ($100,000.00) compensatory damages upon this complaint.

Plaintiffs Shireley Jean Estes, Lisha Dawn Estes, Shawna Annette Estes and David Laird Estes pray jointly for the sum of Sixty-Six Million Dollars ($66,000,000.00) exemplorary or punitive damages against the defendant Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited; plaintiffs Shireley Jean Estes, Lisha Dawn Estes, Shawna Annette Estes and David Laird Estes pray jointly for the sum of Sixty-Six Million Dollars ($66,000,000.00) exemplorary or punitive damages against the defendant State Automobile Mutual Insurance Company; plaintiffs pray for the Court to issue an order enjoining the Governor, Attorney General, and the State of Ohio from participating in any way, through laws or otherwise, with any liability, motor vehicle casualty insurance companies in the selling or administering of liability, motor vehicle casualty insurance to the citizens of Ohio and that the Governor, Attorney General and the State of Ohio be enjoined immediately by temporary injunction and then by permanent injunction from allowing any liability casualty, motor vehicle insurance companies to operate under license or otherwise in the State of Ohio and the Court to order the State of Ohio that all laws passed and maintained for the purpose of liability casualty or motor vehicle insurance operation in the State of Ohio be considered null and void; and unconstitutional and of no effect because they violate provisions of the Constitution of the United States of America; and the Federal Civil Rights Act of 1871, 42 United States Code Section 1983; that the Governor, Attorney General and the State of Ohio be ordered to appoint a special trustee to take charge im-

mediately of all funds in the hands and under the control of all liability, casualty, and motor vehicle insurance companies or their agents within the State of Ohio and the State of Ohio be ordered to pay the said funds to the innocent parties injured by the acts of insured wrongdoers in the most equitable manner under law as soon as practical.

Plaintiffs pray for the Court to order the Attorney General of the United States of America to enjoin the United States of America and all departments of the Federal Government of the United States from participating in any manner, through laws or otherwise with any liability, casualty, and motor vehicle insurance companies in selling or administering liability insurance, casualty insurance, motor vehicle liability insurance to the citizens of the United States; that the United States of America be ordered through the Attorney General to have orders issued to every State in the United States of America to enjoin by a temporary and then by permanent injunction each and every State from allowing any liability, casualty and motor vehicle insurance Companies to operate under license or otherwise within the States and that the Attorney General be ordered to notify each and every State that all of the laws passed and maintained by the States for the purpose of liability, casualty and motor vehicle insurance be considered null and void and that the States be further ordered to appoint special trustees to take charge immediately of all funds in the hands or under the control of all liability, casualty and motor vehicle insurance companies and their agents within the States and that the States be ordered to pay the said funds to the innocent parties injured by the acts of the insured wrongdoers in the most equitable manner under law, as soon as practical.

Plaintiffs pray for the Court to order the Attorney General of the United States of America to direct the Federal

Trade Commission, the Interstate Commerce Commission, and other Proper Federal Agencies to resume immediate jurisdiction of any and all insurance business within the United States of America.

Plaintiffs pray that a statutory three judge Court be convened for the purpose of hearing this case and determining the facts and the appropriate relief.

/s/ ROBERT BEDNARCZUK
Attorney for Plaintiffs

Robert Bednarczuk
Bone Road R. R. #3, Lebanon, Ohio

STATE OF OHIO:

SS:

COUNTY OF HAMILTON:

Shireley Jean Estes, being first duly cautioned and sworn, says that she is a plaintiff herein, and that she is the mother and next friend of minor plaintiffs Lisha Dawn Estes, age 3, Shawna Annette Estes, age 7, and David Laird Estes, age 9, and that the facts and allegations in the foregoing complaint are true as she verily believes.

/s/ SHIRELEY JEAN ESTES

Sworn to and before me subscribed in my presence this 5th day of April, 1966.

/s/ ROBERT BEDNARCZUK
Notary Public, State of Ohio

Motions to dismiss the aforementioned complaint were filed by each and every respondent.

On Monday, June 13, 1966, at 2:22 o'clock P.M. this matter came on for hearing in open Court before John W. Peck, Judge of the United States District Court for the

Southern District of Ohio, Western Division. The cause was submitted.

On July 6, 1966, the memorandum opinion and order dismissing the complaint was made and entered and is set forth in Appendix B, page 34.

On October 10, 1967 an order was made and entered by United States Court of Appeals for the Sixth Circuit affirming the judgment of the District Court to dismiss the complaint and this order is set forth in Appendix C, page 37.

REASONS FOR GRANTING THE WRIT

The petitioners, citizens of the United States of America, have been unequivocally denied their rights of redress in the Federal Courts of the United States after having filed a proper complaint that stated a claim upon which relief could be granted. Every attempt was made to comply with the provisions of Rule 8 (e) Federal Rules of Civil Procedure by petitioners in filing their important complaint.

The memorandum opinion and order written by John W. Peck, District Judge appearing in Appendix B, Page 34, speaks for itself and demonstrates the attitude of that Court toward the petitioners and counsel for petitioners, who are citizens of the United States of America.

The petitioners sustained injuries at the hands of the *foreign* Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation, Limited who acted in conspiracy with State Automobile Mutual Insurance Company and Frank M. Gusweiler, a state court judge who was acting without jurisdiction.

The conspiracy and fraud of the aforementioned parties to the damage of the petitioners falls squarely under Ohio law 250 O.J.2nd 246 to wit:

> In Ohio there need be no express proof from the lips of an eye or ear witness as to the concoction and execution of the scheme of fraud. Nor is it meant that fraud must be proved by direct evidence, for a party who commits a fraud always covers up his proceedings in such a way that it is difficult, if not impossible, in nearly all cases, to prove the very act or intent of the party. Since persons about to commit fraud do not proclaim their intention or call witnesses of their acts, but endeavor to avoid exposure, fraud is seldom susceptible of positive proof and is only to be made out by a detail of the circumstances; and actual fraud is inferred in nearly all cases by the circumstances proved. In a Court of law, as well as in equity, fraud may be proved by circumstances sufficient in the minds of the jury to establish the fact that it is actually committed. 250 O.J.2nd 246.

The aforementioned respondent Insurance Companies and the judge were acting under color of law while depriving the petitioners of rights guaranteed them by the Constitution and laws of the United States, therefore, petitioners have stated a claim upon which relief can be granted under the Federal Civil Rights Act of 1871, 42 United States Code 1983 which is set forth in Appendix A, page 30.

The following cases are in point with petitioners case and have been successful under the Federal Civil Rights Act of 1871, 42 United States Code against Agents of Justice:

Brazier v. *Cherry,* 293 F.2d 401 (5th Cir. 1961); *Brown* v. *Rutter,* 139 F. Supp. 679 (W.D. Ky. 1956); *Cohen* v. *Norris,* 300 F.2d 24 (9th Cir. 1962); *Cohen* v. *Cahill,* 281 F.2d 879 (9th Cir. 1960); *Coleman* v. *Johnston,* 247 F.2d 273 (7th Cir. 1957); *Davis* v. *Johnston,* 138 F. Supp. 572 (N.D. Ill. 1955); *Davis* v. *Turner,* 197 F.2d 847 (5th Cir. 1952); *Egan* v. *City of Aurora,* 291 F.2d 706 (7th Cir. 1961); *Fulwood* v. *Clemmer,* 295 F.2d 171 (D.C. Cir.

1961); *Gordon* v. *Garrson,* 77 F. Supp. (E.D. Ill. 1948); *Hardwick* v. *Hurley,* 289 F.2d 529 (7th Cir. 1961); *Jackson* v. *Duke,* 259 F.2d 529 (7th Cir. 1961); *Jackson* v. *Duke,* 259 F.2d 3 (5th Cir. 1958); *Lewis* v. *Brautigam,* 227 F.2d 124 (5th Cir. 1955); *McCollum* v. *Mayfield,* 130 F. Supp. 112 (N.D. Cal. 1955); *McShane* v. *Moldovan,* 172 F.2d 1016 (6th Cir. 1949); *Monroe* v. *Pape,* 365 U.S. 167 (1961); *Picking* v. *Pa. R.R. Co.,* 151 F.2d 240 (3rd Cir. 1945); *Pierce* v. *Lavallee,* 293 F.2d 233 (2nd Cir. 1961); *Refoule* v. *Ellis,* 74 F. Supp. 336 (N.D. Ga. 1947); *Selico* v. *Jackson,* 201 F. Supp. 475 (S.D. Cal. 1962); *Sellers* v. *Johnson,* 163 F.2d 877 (8th Cir. 1947); *Sewell* v. *Pegelow,* 291 F.2d 196 (4th Cir. 1961); *State of Arkansas* v. *Central Surety Corp.,* 102 F. Supp. 444 (W.D. Ark. 1952); *United States* v. *Classic,* 313 U.S. 293; *Valle* v. *Stengel,* 176 F.2d 697 (3rd Cir. 1949); *Wakat* v. *Harlib,* 253 F.2d 59 (7th Cir. 1958).

The case of *Monroe* v. *Pape,* 365 U.S. 167 is significant in this matter because the Court reaffirmed the proposition that it definitely did not matter whether the laws acted under by the offenders were constitutional or unconstitutional, the offender clothed with the authority would still be under "color of law".

Respondent, Frank M. Gusweiler, cannot hide behind immunity and act in conspiracy with others; nor can he hide behind judicial immunity when acting completely without jurisdiction. Frank M. Gusweiler is further bound by Article VI (2) of the Constitution of the United States to wit:

> "This Constitution and the laws of the United States which shall be made in pursuance thereof and all Treaties made, or which shall be made, under authority of the United States shall be the Supreme Law of the Land, and the *Judges* in every State shall be bound

thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The petitioners rights to redress is clear under the Federal Civil Rights Act of 1871; 42 United States Code 1983 which was passed by Congress to protect innocent, helpless citizens of the United States of America, who are oppressed by the wicked powerful oppressors, who act under "color of law" to deprive the innocent, helpless citizens of their rights guaranteed by the Constitution of the United States of America, especially where justice in the State forum is delayed or denied; the Act is as follows:

> 42 U.S.C. Section 1983
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (42 U.S.C. Sec. 1983)

The evil, illegal and unconstitutional McCarran-Ferguson Insurance Regulation Act, 15 United States Code Sections 1011 to 1015 inclusive has taken away the National Security of petitioners and all Americans. It permits multiple taxation without representation by the business of Insurance, which is almost entirely foreign underwritten.

The above mentioned evil Act allows the whole business of Insurance to invade our nation, states, counties and homes, to ravage, rape and defraud Americans. This happened to the petitioners. The Act deprived the petitioners of rights guaranteed them by Article IV, Section 4, of the Constitution of the United States, to wit:

> The United States shall guarantee to every State in this Union a Republican Form of Government and shall protect each of them against invasion; and on application of the legislature or of the Executive against domestic violence.

The domestic violence in America today has been caused by the business of Insurance.

The McCarran-Ferguson Insurance Regulation Act of 1945 was Treason against the United States of America. Those who were responsible for the said Act knew that the Supreme Court of the United States of America had ruled in the year of 1944 that the 'business of Insurance' was inter-state commerce in the case of *United States* v. *Southeastern Underwriters Association,* 322 U.S. 533; those responsible for the Act also knew that *none* of the States of our Union had proper laws or could have proper laws to protect the Citizens from the fraud and slaughter that was to come to all Americans at the hands of the 'business of Insurance'

Since 1945, by their evil Act, the entire 'business of Insurance' has falsely claimed to be absolutely exempt from all of the Constitutional provisions, Federal Statutes, Federal Laws, Federal Agencies, and of course all Federal Income Tax, including all of the income from their gigantic investments!

In view of the aforementioned facts the petitioners have stated a claim upon which relief can be granted against the United States of America under the mighty Fourteenth Amendment of the Constitution of the United States of America, Article I:

> Article XIV, Section I
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside.

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The petitioners have stated a claim upon which relief can be granted against the State of Ohio because the Casualty Insurance Laws of Ohio do not provide equal protection of the law guaranteed petitioners by the Fourteenth (14) Amendment to the Constitution of the United States. The money collected from premiums paid into the 'business of Insurance' by all citizens of Ohio and other states, is used to protect and to defend the wrong doers against the just claims of the innocent injured persons.

Rule 20 Federal Rules of Civil Procedure does permit the joinder of all of the parties in the complaint and Rule 20 is set forth in Appendix A, page 30.

CONCLUSION

It is a form of tyranny over the mind of Man to permit the use of the McCarran-Ferguson Insurance Regulation Act and the Casuality Insurance Laws in America. Mankind has fought a long hard war against all forms of slavery. It is wrong for one man to enslave another. Each man and each nation has the right to freedom and the granting of this writ will be one step toward the securing of that freedom from the great World Oppressor the 'business of Insurance'.

/s/ ROBERT BEDNARCZUK
Robert Bednarczuk
Attorney for Petitioners
Bone Road R. R. #3
Lebanon, Ohio 45036

APPENDIX A

Constitutional Provisions Involved

Section I, Fourteenth Amendment, U. S. Constitution

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 4, Article IV, U. S. Constitution

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government and shall protect each of them against invasion; and on application of the legislature or of the Executive against domestic violence

Article VI (2), U. S. Constitution

(2) This Constitution and the laws of the United States which shall be made in pursuance thereof and all Treaties made, or which shall be made, under authority of the United States shall be the Supreme Law of the Land, and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding.

Statutes and Rules Involved

Federal Civil Rights Act of 1871,
42 U. S. Code Section 1983

Every person who, under color of any statute, or-

dinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction there of to the deprivation of any rights, privileges or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Federal Rules of Civil Procedure, Rule 8 (e)

(e) Pleading To Be Concise and Direct; Consistency. Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

Federal Rules of Civil Procedure, Rule 20

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

McCarran-Ferguson Insurance Regulation Act,
15 U. S. Code Sections 1011 to 1015 Inclusive
Public Law 15, 79th Congress (Title 15, U. S. Code Section 1011 to 1015 Inclusive approved March 9, 1945 generally referred to as the McCarran-Ferguson Insurance Act.

1011 Declaration of Policy
Congress declares that the continued regulation and taxation by the several States of the business of Insurance is in the Public Interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several states.

1012 Regulation by State Law; Federal Law Relating Specifically to Insurance; Applicability of Certain Federal Laws after June 30, 1948

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, that after June 30, 1948,

the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

1013 Suspension Until June 30, 1948, of Application of Certain Federal Laws: Sherman Anti-Trust Act Applicable To Agreements to, or Acts of, Boycott, Coercion, or Intimidation

(a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, Act, known as the Federal Trade Commission Act, and the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

1014 Applicability of National Labor Relations Act and the Fair Labor Standards Act of 1938

Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

1015 Definition of "State"

As used in this chapter, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, Guam, and the District of Columbia.

APPENDIX B

(CAPTION OMITTED, CASE NO. 6137)

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

(Filed July 6, 1966)

Before: John W. Peck, District Judge.

In a long, rambling and largely incomprehensible Complaint in which no attempt is made to comply with the provisions of Rule 8(e), Federal Rules of Civil Procedure, the plaintiffs seek to recover damages in a total amount of $133,200,000.00. The named defendants are two insurance companies, a judge of the Common Pleas Court of Hamilton County, Ohio, the Governor of the State of Ohio and the Attorney General of the United States. Each of the defendants has separately moved for dismissal, and while the various motions have varying alternative provisions, for present purposes each will be considered as a motion to dismiss.

No claim or contention of the plaintiffs is entitled to be dignified by a discussion by this Court. A single quotation

from their memorandum in opposition to one of the motions to dismiss will demonstrate this fact. Plaintiffs in that memorandum accuse one of the defendant insurance companies of "advertising falsely that insurance is a protector of society (while in reality defendant is the oppressor) to the citizens of Ohio and the United States of America to build an image of 'God' for the defendant (insurance company) and while at the same time portraying the plaintiff Shireley Jean Estes, a claimant as 'scum of the earth'. In support of their tenuous, at best, position, plaintiffs cite only the case of *Monroe* v. *Pape,* 365 U.S. 167 (1961). However, even a cursory reading of that case indicates that it is of no conceivable application to the present situation.

While as hereinabove indicated we do not propose to attempt response to the nebulous and scurrilous charges of the plaintiffs, we cannot let the charges against the individual defendants remain on the record unnoticed. The first of these defendants is a most highly regarded member of the state judiciary. In a document curiously captioned "Motion of the Plaintiffs in Opposition to Motion of Defendant (Judge), it is alleged that in an action in his court one of the plaintiffs 'was victimized and deprived of her rights by the corrupt intentional acts of defendant (Common Pleas Judge), an elected state official, acting under color of statute, ordinances, customs and usage.' Fortunately, this Judge is possessed of such stature in the community that this and numerous other scurrilous charges made by the plaintiffs can do him virtually no harm, but that does not justify their having been made. It need hardly be pointed out that if plaintiffs had complaint concerning whatever transpired in the state trial court full rights of review were available.

To the extent that it can be gleaned from the Complaint, the Governor of Ohio and the Attorney General of the

United States are named in their official capacities, and the attacks against them are accordingly less personal. Nonetheless, it is again felt proper to affirmatively hold that the accusations made against these gentlemen, whether as public officials or otherwise, even if construed most favorably to the pleaders allege no cause of action against said defendants.

Similarly, it would be improper to permit charges against two law firms to remain of record without comment. In their memoranda responding to the separate motions of the insurance companies for dismissal, plaintiffs make the identical charge that each such company was 'acting as a professional runner for (its) law firm . . . . who is now handling this case,' and further accusing each such company of 'creating a monopoly and control of litigation in the State Forum in Ohio, by putting this case into the hands of (its) law firm . . ., to jam and to congest the legal process to cheat plaintiffs.' As in the case of the Common Pleas Judge, these firms are of such stature that these and the other scurrilous attacks made upon them can do virtually no harm, but again they should not be permitted to stand of record without comment.

Contrary to the general practice and the requirements of procedure in this court, one of the plaintiffs signed the Complaint under oath. Nonetheless, both from the tenor of the volumious memoranda filed by him and from that of his oral argument in court, it seems proper to conclude that to a very large extent this entire action represents the personal vendetta of counsel for the plaintiffs against the insurance industry in general and against the named defendant companies in particular, and against the defendant Common Pleas Judge, rather than a sincere and bona fide attempt to recover monetary damages for the plaintiffs.

The staggering amount of the prayer further supports this conclusion. In accordance with the foregoing,

IT IS ORDERED that the Complaint herein should be and it is hereby dismissed for failure to state a claim upon which relief can be granted, and that costs should be and are assessed against plaintiffs.

/s/ John W. Peck
District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17,379

(CAPTION OMITTED)

ORDER

(Filed October 10, 1967)

Before WEICK, Chief Judge, CELEBREZZE and COMBS, Circuit Judges.

The appeal came on to be heard and was argued by counsel for appellants; counsel for appellees, having waived oral argument, submitted their claims on brief. The Court finds no error prejudicial to appellants in the proceeding and judgment of the District Court.

It is therefore ORDERED that the judgment of the District Court dismissing the complaint be and it is hereby AFFIRMED.

Entered by order of the Court.

/s/ Carl W. Reuss
Clerk.

Issued as Mandate: October 31, 1967

Costs: NONE
Filing fee .....
Printing appendix .....
Total .....

A True Copy

ATTEST:

signed: Carl W. Reuss
Carl W. Reuss, Clerk

A True Copy of the Original
Filed 10/31/67

Attest: John D. Lyter, Clerk
By W. Hess Brown, Deputy
Certified 10/31/67

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No. 994

In The

Supreme Court of the United States

October Term, 1967

SHIRELEY JEAN ESTES; LISHA DAWN ESTES; SHAWNA ANNETTE ESTES AND DAVID LAIRD ESTES,
Petitioners,

v.

CAMDEN FIRE INSURANCE ASSOCIATION OF GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION LIMITED; STATE AUTOMOBILE MUTUAL INSURANCE COMPANY; FRANK M. GUSWEILER; STATE OF OHIO AND UNITED STATES OF AMERICA,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 994

SHIRELEY JEAN ESTES; LISHA DAWN ESTES; SHAWNA ANNETTE ESTES AND DAVID LAIRD ESTES,

Petitioners,

v.

CAMDEN FIRE INSURANCE ASSOCIATION OF GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION LIMITED; STATE AUTOMOBILE MUTUAL INSURANCE COMPANY; FRANK M. GUSWEILER; STATE OF OHIO AND UNITED STATES OF AMERICA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JURISDICTION

Respondent Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation, Ltd. (hereinafter called CAMDEN FIRE) questions the applicability of 28 U.S.C. 1257 (3) (Appendix A) cited by the Petitioners to invoke the jurisdiction of this Court in that the section cited deals with review of final judgment of the highest court of a state, whereas the balance of the petition seeks a review of an order of the United States Court of Appeals for the Sixth Circuit affirming a judg-

ment of the United States District Court for the Southern District of Ohio, Western Division.

QUESTIONS PRESENTED FOR REVIEW

Respondent Camden Fire says that three questions are presented for review:

I. Was the petitioners' complaint sincere and truthful?

II. Did petitioners' complaint fail to state a cause of action upon which relief could be granted?

III. Was there proper jurisdiction over all of the party respondents named in the petitioners' complaint?

STATEMENT OF THE CASE

This case arises upon a complaint filed in the United States District Court, Southern District of Ohio, Western Division. The complaint is fully set forth in the Petition for a Writ of Certiorari filed on behalf of petitioners and occupies pages three (3) through twenty-three (23) of the said petition. Motions to dismiss were filed on behalf of all of the respondents. On July 6, 1966 a memorandum opinion and order dismissing the complaint was made and entered by United States District Court Judge John W. Peck. (Appendix B, page 8). Thereafter an appeal was made to the United States Circuit Court of Appeals for the Sixth Circuit and on October 10, 1967 an order affirming the judgment of the Federal District Court was made and entered. (Appendix C, page 11). The case is now pending on a Petition For A Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit. The statement of the case set forth by petitioners, consisting, primarily, of the complaint filed in the United States District Court, does not set forth an agreed state-

ment of fact. Respondent Camden Fire does not consider this such a statement of fact which can be considered a record.

THE ARGUMENT

I. Was The Petitioners' Complaint Sincere and Truthful?

The question was answered in the negative by United States District Court Judge John W. Peck and this respondent avers that the finding was correct. A cursory reading of the complaint, which occupies twenty (20) pages of the petitioners' brief, will support the finding. District Court Judge Peck said in his opinion:

> "No claim or contention of the plaintiffs is entitled to be dignified by a discussion of this Court."

There is obviously no attempt to comply with the Federal Rules of Civil Procedure and most particularly Rule 8 (e) (1) (Appendix A, page 7).

II. Did Petitioners' Complaint Fail To State A Cause Of Action Upon Which Relief Could Be Granted?

The United States District Court and the United States Court of Appeals for the Sixth Circuit have both held, in this case, that the complaint failed to set forth a real dispute on the existence of a controversy which arises under the Constitution of the United States or the laws of the United States.

The only complaint made against Camden Fire is that it acted in conspiracy with State Automobile Mutual Insurance Company and Hamilton County, Ohio, Common Pleas Court Judge Frank M. Gusweiler to deny petitioners' rights guaranteed by the Constitution and laws of the United States and thereby violated the Federal Civil Rights Act of 1871, 42 U.S.C. 1983 (Appendix A, page 7).

Under the Civil Rights Act, liability is predicated upon deprivation of Federal rights by virtue of acts under *color of law,* and not upon the validity or invalidity of the law under the color of which defendant acted.

The respondent, Camden Fire, is a private corporation and holds no public office or position of public authority and cannot be said to act "under color of law." This term has frequently been defined by the United States Supreme Court. It has been defined as: "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with authority of state law is action taken 'under color of any statute' within this section." *Picking* v. *Pennsylvania R. Co.,* 151 F.2d 240.

By no stretch of the imagination was respondent "clothed with authority of state law." *Williams* v. *United States,* 341 U.S. 97; *U. S.* v. *Classic,* 313 U.S. 229.

The Circuit Court of Appeals for the District of Columbia in *Williams* v. *Hot Shoppes,* 293 F.2d 835, *cert. den.* 370 U.S. 925 stated:

> "Under the statutes creating civil actions against any person who under color of any statute, etc. deprives any United States citizen of any rights and privileges secured by the Constitution and laws, in order to constitute conduct under 'color of law', defendants refusal to serve plaintiff must be state action, and there must be a deprivation of a right, privilege or immunity secured by the Constitution and laws of the United States."

The Court made it clear that even contact with or regulation by the state did not create "color of law." See also *Williams* v. *Yellow Cab Co. of Pittsburgh,* 200 F.2d 302, *Moffett* v. *Commerce Trust Co.,* 187 F.2d 242.

In *Hardyman* v. *Collins,* 80 F.S. 501; 183 Fed.2d 308, 341 U.S. 651 a case dealing with a different civil rights act than the one referred to by the petitioner but with essen-

tially the same thought, the District Court decision, which was later affirmed by this Court, contained the following language:

> "Before liability under the Civil Rights Statute attaches, there must be a violation of national rights, and such violation must be by the State, one of its agencies, or persons being or claiming to be repositories of state power."

It is well settled that allegations that private persons, such as respondent, violate petitioners' rights contrary to the due process guarantee of either the Fifth or Fourteenth Amendment do not state a substantial and meritorious Federal question sufficient to vest Federal jurisdiction because as a matter of substantive constitutional law, the due process clauses afford protection only against governmental activity through some government agency. *Shelly* v. *Kraemer,* 334 U.S. 1; *Teague* v. *Brotherhood of Locomotive Firemen and Engineers,* 127 F.2d 53; *Givens* v. *Moll,* 177 F.2d 765; *Swank* v. *Patterson,* 139 F.2d 145.

The above authorities amply demonstrate that the Civil Rights Act does not apply to respondent corporation, a private individual. The same would apply to respondent State Automobile Mutual Insurance Company. Also respondent Frank M. Gusweiler, as a judge of the Court of Common Pleas of Hamilton County, Ohio, cannot be liable under 42 U.S.C. 1983 (Civil Rights Act of 1871) for his action in a civil case because in such a case he is not acting under "color of law" as required by the statute. This point will be more fully explored by the brief of respondent Frank M. Gusweiler, but the following cases support this position: *Bottome* v. *Lindsley,* 170 F.2d 705 (10 Cir. 1948) *Cert. den.* 336 U.S. 944 and *Swift* v. *Fourth National Bank,* 205 F. Supp. 563 (M.D. La. 1962).

It would seem clear from the above that the respondents mentioned do not individually fall within the statute and that consequently the mere allegation that they were acting in concert does not place them within the statute.

III. Was There Proper Jurisdiction Over All Of The Party Respondents Named In The Petitioners Complaint?

Respondent Camden Fire contends that the United States District Court and the United States Court of Appeals were correct in ruling that there was no jurisdiction over all of the party respondents named in the complaint because it is obvious from a reading of the caption of the complaint that there was not diversity of citizenship between the petitioners and all of the respondents herein.

CONCLUSION

We submit that the United States District Court was correct in its findings and the United States Court of Appeals correct in its Order Affirming the District Court since the charges made against Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation, Limited are unsupported by factual allegations and do not state a claim upon which relief could be granted.

Respectfully submitted,

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Assurance Corporation, Limited

APPENDIX A

28 United States Code § 1257

Trial judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

(3)

By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commissions held or authority exercised under, the United States.

42 United States Code § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Federal Rules of Civil Procedure, Rule 8(e)(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

APPENDIX B

(CAPTION OMITTED, CASE NO. 6137)

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

(Filed July 6, 1966)

Before: John W. Peck, District Judge.

In a long, rambling and largely incomprehensibe Complaint in which no attempt is made to comply with the provisions of Rule 8(e), Federal Rules of Civil Procedure, the plaintiffs seek to recover damages in a total amount of $133,200,000.00. The named defendants are two insurance companies, a judge of the Common Pleas Court of Hamilton County, Ohio, the Governor of the State of Ohio and the Attorney General of the United States. Each of the defendants has separately moved for dismissal, and while the various motions have varying alternative provisions, for present purposes each will be considered as a motion to dismiss.

No claim or contention of the plaintiffs is entitled to be dignified by a discussion by this Court. A single quotation from their memorandum in opposition to one of the motions to dismiss will demonstrate this fact. Plaintiffs in that memorandum accuse one of the defendant insurance companies of "advertising falsely that insurance is a protector of society (while in reality defendant is the oppressor) to the citizens of Ohio and the United States of America to build an image of 'God' for the defendant (insurance company) and while at the same time portraying the plain-

tiff Shireley Jean Estes, a claimant as 'scum of the earth'. In support of their tenuous, at best, position, plaintiffs cite only the case of Monroe v. Pape, 365 U.S. 167 (1961). However, even a cursory reading of that case indicates that it is of no conceivable application to the present situation.

While as hereinabove indicated we do not propose to attempt response to the nebulous and scurrilous charges of the plaintiffs, we cannot let the charges against the individual defendants remain on the record unnoticed. The first of these defendants is a most highly regarded member of the state judiciary. In a document curiously captioned "Motion of the Plaintiffs in Opposition to Motion of Defendant (Judge)," it is alleged that in an action in his court one of the plaintiffs 'was victimized and deprived of her rights by the corrupt intentional acts of defendant (Common Pleas Judge), an elected state official, acting under color of statute, ordinances, customs and usage.' Fortunately, this Judge is possessed of such stature in the community that this and numerous other scurrilous charges made by the plaintiffs can do him virtually no harm, but that does not justify their having been made. It need hardly be pointed out that if plaintiffs had complaint concerning whatever transpired in the state trial court full rights of review were available.

To the extent that it can be gleaned from the Complaint, the Governor of Ohio and the Attorney General of the United States are named in their official capacities, and the attacks against them are accordingly less personal. Nonetheless, it is again felt proper to affirmatively hold that the accusations made against these gentlemen, whether as public officials or otherwise, even if construed most favorably to the pleaders allege no cause of action against said defendants.

Similarly, it would be improper to permit charges against two law firms to remain of record without comment. In

their memoranda responding to the separate motions of the insurance companies for dismissal, plaintiffs make the identical charge that each such company was 'acting as a professional runner for (its) law firm . . . . who is now handling this case,' and further accusing each such company of 'creating a monopoly and control of litigation in the State Forum in Ohio, by putting this case into the hands of (its) law firm . . ., to jam and to congest the legal process to cheat plaintiffs.' As in the case of the Common Pleas Judge, these firms are of such stature that these and the other scurrilous attacks made upon them can do virtually no harm, but again they should not be permitted to stand of record without comment.

Contrary to the general practice and the requirements of procedure in this court, one of the plaintiffs signed the Complaint under oath. Nonetheless, both from the tenor of the voluminous memoranda filed by him and from that of his oral argument in court, it seems proper to conclude that to a very large extent this entire action represents the personal vendetta of counsel for the plaintiffs against the insurance industry in general and against the named defendant companies in particular, and against the defendant Common Pleas Judge, rather than a sincere and bona fide attempt to recover monetary damages for the plaintiffs. The staggering amount of the prayer further supports this conclusion. In accordance with the foregoing,

IT IS ORDERED that the Complaint herein should be and it is hereby dismissed for failure to state a claim upon which relief can be granted, and that costs should be and are assessed against plaintiffs.

/s/ John W. Peck
District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
For The Sixth Circuit

No. 17,379

(CAPTION OMITTED)

ORDER

(Filed October 10, 1967)

Before WEICK, Chief Judge, CELEBREZZE and COMBS, Circuit Judges.

The appeal came on to be heard and was argued by counsel for appellants; counsel for appellees, having waived oral argument, submitted their claims on brief. The Court finds no error prejudicial to appellants in the proceeding and judgment of the District Court.

It is therefore ORDERED that the judgment of the District Court dismissing the complaint be and it is hereby AFFIRMED.

Entered by order of the Court.

/s/ Carl W. Reuss
Clerk.

Issued as Mandate: October 31, 1967

Costs: NONE
Filing fee .....
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Total .....

A True Copy

ATTEST:

signed: Carl W. Reuss
Carl W. Reuss, Clerk

A True Copy of the Original
Filed 10/31/67
Attest: John D. Lyter, Clerk
By W. Hess Brown, Deputy
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967

SHIRELEY JEAN ESTES; LISHA DAWN ESTES; SHAWNA ANNETTE ESTES AND DAVID LAIRD ESTES,
Petitioners,

vs.

CAMDEN FIRE INSURANCE ASSOCIATION OF GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION LIMITED; STATE AUTOMOBILE MUTUAL INSURANCE COMPANY; FRANK M. GUSWEILER; STATE OF OHIO AND UNITED STATES OF AMERICA,
Respondents.

BRIEF OF RESPONDENT, FRANK M. GUSWEILER, IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Did the dismissal by the District Court of the petitioners' complaint against the respondent, Frank M. Gusweiler, (on the ground it failed to state a claim upon which relief can be granted) present any question, constitutional or otherwise, for review by this Court?

STATEMENT OF THE CASE

For the purposes of this brief, the respondent, Frank M. Gusweiler, accepts the Statement Of The Case appearing on pages 3-24 of the petition for certiorari.

We wish to add, however, that all that was before the District Court by way of facts upon the hearing of the various respondents' motions to dismiss were the allegations of the complaint, a pleading which the distinguished District Judge characterized as "long, rambling and largely incomprehensible . . . in which no attempt is made to comply with the provisions of Rule 8(e), Federal Rules of Civil Procedure, . . ." (page 34 of Appendix B of the petition for certiorari.)

Insofar as the respondent, Frank M. Gusweiler, is concerned, the only language which makes any attempt to state a cause of action against him is that found in the third count of the complaint (page 11 of the petition for certiorari). This language simply asserts the conclusion that Judge Gusweiler "intentionally and maliciously deprived the plaintiffs" of certain constitutional rights in that he "wrongfully, actively and intentionally aided a conspiracy between the defendants Camden Fire Insurance Association of General Accident Fire and Life Assurance Corporation Limited and State Automobile Mutual Insurance Company to cheat plaintiffs. . . ."

For purposes of clarification, and although it is not mentioned in the petitioners' complaint or in the petition for certiorari, Judge Gusweiler was the judge assigned to hear two personal injury cases in the Court of Common Pleas of Hamilton County, Ohio, in which the present petitioners were plaintiffs. These assignments were made by the Assignment Commissioner of that court pursuant to the rules of that court.

The complaint does not say how or when Judge Gusweiler is supposed to have deprived the petitioners of any constitutional rights; nor does it say how or when he is supposed to have conspired with the respondent-insurance carriers; nor does it say just what that claimed conspiracy consisted of.

It was upon such a state of the pleadings that the District Court granted this respondent's motion to dismiss.

ARGUMENT

There are actually two bases upon which the District Court's dismissal of the complaint against Judge Gusweiler can easily be justified. First, in spite of its great length and accusatory allegations, there are no facts in the complaint asserting any actionable conduct on the part of this respondent. Secondly, the doctrine of judicial immunity provides a complete defense to the petitioners' claims against Judge Gusweiler.

We will confine the following argument to those matters which have some bearing on the claims against this respondent. We will, therefore, refrain from any discussion of such matters as the contentions of the petitioners regarding the McCarran-Ferguson Insurance Regulation Act, 15 U.S.C., § 1011-1015.

A. Absence of Facts Alleging Actionable Conduct

Although the petitioners' complaint brands Judge Gusweiler's conduct with a series of inflammatory epithets, it never does say just what that conduct consisted of. It is never permissible for a litigant, whether he is pleading under the Civil Rights Act of 1871 or otherwise, to attempt to state a cause of action merely by pleading that a defendant "cheated" the plaintiffs. Arguments and legal conclusions

are never admitted by a motion to dismiss under Rule 12 (b), a proposition supported by such cases as *Pauling* v. *McElroy,* 278 F.2d 252 (D.C. App. 1960), cert. den. 263 U.S. 835; *Halliburton Company* v. *Norton Drilling Company,* 302 F.2d 431 (5 Cir. 1962), cert. den. 374 U.S. 829; *Wise* v. *Chicago,* 308 F.2d 364 (7 Cir. 1962), cert. den. 372 U.S. 944; and *Rudnicki* v. *McCormack,* 210 F. Supp. 905 (D. Mass. 1962), app. dis. 372 U.S. 226.

Therefore, the utter failure of the petitioners to allege a single fact of wrongdoing on the part of the respondent, Frank M. Gusweiler, justified entirely the granting of his motion to dismiss. Furthermore, such a disposition of the petitioners' complaint by the District Court raises no question for consideration by this Court. There is no suggestion that this ruling is in any way in conflict with any decision of this Court; there is no suggestion that any Court of Appeals has ruled differently than the Sixth Circuit in affirming; and there is no constitutional problem presented since a simple failure on the part of the petitioners to state their case cannot be salvaged by vague and unsupported references to Articles IV and VI of the Constitution and to the Fourteenth Amendment.

B. Judicial Immunity

It is implicit in the petitioners' complaint that, whatever acts or omissions of Judge Gusweiler are complained of, these acts or omissions were in his capacity as a Judge of the Court of Common Pleas of Hamilton County, Ohio, the court of general jurisdiction in that state. The various references to Judge Gusweiler in the petition for certiorari reaffirm the fact that the petitioners' claims against this respondent are made in his capacity as a judge.

A principle of law which is completely clear is that no civil action can be maintained against a judge for the

recovery of damages by one claiming to have been injured by his judicial action within the scope of his jurisdiction of the person and of the subject matter. This rule in Ohio is stated in 31 O. Jur. 2d, Judges § 88, and is supported by a series of cases decided by the Supreme Court of Ohio, among them *Brinkman* v. *Drolesbaugh*, 97 O.S. 171 (1918), and *Voll* v. *Steele*, 141 O.S. 293, 47 N.E.2d 991 (1943).

On pages 24 and 26 of the petition for certiorari, the petitioners contend that, when he did whatever it is of which the petitioners complain, Judge Gusweiler was acting without jurisdiction. No such allegations appeared at any point in the complaint, and one can only guess that this assertion by counsel for the petitioners is based upon his contention that certain federal and state laws dealing with the insurance industry are unconstitutional. While this contention on the part of the petitioners is patently erroneous, the unconstitutionality of the statute involved in the case decided by the defendant-judge would not deprive him of the defense of judicial immunity.

The case standing for that proposition and also clearly establishing the absence of any question for review by this Court is the decision of this Court in *Pierson* v. *Ray*, 386 U.S. 547 (1967).

In the *Pierson* case the petitioners had been convicted under a Mississippi breach of the peace statute which was later held unconstitutional. Their convictions were later reversed, and they then brought an action for damages under the Civil Rights Act of 1871, 42 U.S.C., § 1983, in the District Court against the arresting police officers and also against the police judge (Spencer) who originally convicted them. This is, of course, the very same statute relied upon by the petitioners in the courts below and in this Court. In the district court in the *Pierson* case there were jury verdicts for the defendants. The Court of Ap-

peals reversed as to the police officers but held that the defendant-judge was shielded by the doctrine of judicial immunity. The first syllabus paragraph written by this Court in the *Pierson* appeal completely destroys any argument for granting the pending petition for certiorari as to the respondent, Frank M. Gusweiler. That syllabus paragraph reads as follows:

> "The settled common-law principle that a judge is immune from liability for damages for his judicial acts was not abolished by Section 1983."

In finding no difficulty in agreeing that the defendant-judge was immune from liability for damages for his role in the convictions in the *Pierson* case, this Court, at pages 553-554 of its opinion, said this:

> "Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in *Bradley* v. *Fisher,* 13 Wall. 335 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and it 'is not for the protection or benefit of a malicious or corrupt judge but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.'" (*Scott* v. *Stansfield,* L.R. 3 Ex. 220, 223 (1868); quoted in *Bradley* v. *Fisher, supra,* 349, note, at 350).

After pointing out that the errors of a judge may be corrected on appeal but that a judge should not have to be in fear of claims of malice and corruption made by dissatisfied litigants, the opinion of this Court continues:

> "We do not believe that this settled principle of law was abolished by § 1983, which makes liable 'every

> person' who under color of law deprives another person of his civil rights. The legislative record gives no clear indication that Congress meant to abolish wholesale all common-law immunities. Accordingly, this Court held in *Tenney* v. *Brandhove*, 341 U.S. 367 (1951), that the immunity of legislators for acts within the legislative role was not abolished. The immunity of judges for acts within the judicial role is equally well established, and we presume that Congress would have specifically so provided had it wished to abolish the doctrine."

In footnote 8, on pages 554 and 555 of the opinion, this Court rejected the petitioners' contention that the defendant-judge had been involved in some sort of conspiracy, just as the courts below in the present case properly rejected the unsupported allegations of conspiracy with respect to the respondent, Frank M. Gusweiler.

This Court's citation of *Bradley* v. *Fisher*, 13 Wall. 335 (1872), is particularly significant since we stressed that decision in the District Court and in the Court of Appeals, arguing that the second syllabus paragraph of that case points out that, if civil actions could be maintained against a judge merely because a dissatisfied litigant saw fit to allege in his complaint that the acts of a judge were done with partiality or were malicious or corrupt, the protection essential to judicial independence would be entirely swept away. The same opinion of this Court goes on to say that few persons sufficiently irritated to institute an action against a judge for his judicial acts would hesitate to ascribe any character to the act which would be essential to the maintenance of the action. Therefore, the vicious nature of the charges made against the respondent, Frank M. Gusweiler, in the complaint filed in the District Court in this case do not prevent the application of the rule of judicial immunity.

We also note this Court's footnote 9, at page 555 of its opinion in the *Pierson* case. That footnote points out that since the decision in the *Tenney* case the various courts of appeals have consistently held that judicial immunity is a defense to an action under 42 U.S.C. § 1983. In our briefs in the District Court and the Court of Appeals we emphasized particularly those decisions of the Sixth Circuit so holding, including *Cuiska* v. *Mansfield,* 250 F.2d 700 (6 Cir. 1957), cert. den. 356 U.S. 937, in which the defendant-judge had presided in a criminal case, and *Kenney* v. *Fox,* 232 F.2d 388 (6 Cir. 1956), cert. den. 352 U.S. 855, in which the defendant-judge had presided in a civil case.

On pages 25 and 26 of the petition for certiorari, the petitioners cite a number of decisions in support of their position. We have examined each of these cases and find that none is even remotely close to the case at bar. Not a single one of these cases involves the claim of judicial immunity, and this applies especially to the case of *Monroe* v. *Pape,* 365 U.S. 167 (1961). In fact, in treating the questions raised regarding the three police officers in the *Pierson* case, the opinion of this Court points out that there was no claim of immunity, judicial or otherwise, considered in the *Monroe* case. That decision is, therefore, obviously not controlling in this matter, and this was recognized from the outset by the District Judge, as is disclosed from his comment appearing at page 35 in Appendix B to the petition for certiorari.

Therefore, since this Court has within the last twelve months definitively ruled that judicial immunity is available as a defense to a claim made against a judge under the Civil Rights Act of 1871, there is no valid reason why this Court need consider any question under that statute as it might apply to the respondent, Frank M. Gusweiler.

CONCLUSION

As was pointed out by the District Court (page 36 of Appendix B of the petition for certiorari), this action appears to represent the personal vendetta of counsel for the petitioners against the insurance industry in general and against the two insurer-respondents and Judge Gusweiler in particular, rather than a sincere and bona fide attempt to recover monetary damages. The allegations of the complaint and the assertions of counsel in supporting his petition for certiorari are, to say the least, totally unbelievable and astounding. On such a basis alone, this Court should deny certiorari. However, in addition thereto, we believe that we have demonstrated why this Court need not consider any question raised by the petition for certiorari, no new or undecided or publicly important issue having been presented. Therefore, it is urged that the petition for certiorari be denied.

Respectfully submitted,

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Respondents.

BRIEF OF RESPONDENT, STATE AUTOMOBILE MUTUAL INSURANCE COMPANY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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JURISDICTION

The Petition filed herein invokes this Court's jurisdiction under 28 U.S.C.A. 1257 (3). Inasmuch as that statute confers jurisdiction only as to the review of rulings and judgments of the highest court of a State, the caption of the Petition does, in itself, demonstrate the inapplicability of that statute.

This Respondent's opposition to jurisdiction does not, however, rest solely upon Petitioners' citation of an inapplicable statute. Respondent contends that a review of the Petition and of the record will demonstrate that the jurisdiction of this Court is not and cannot be properly invoked under any federal statute for the reason that no federal question either is now or has ever been properly presented.

It has long been recognized that the jurisdiction of the courts below over the subject matter of the action must affirmatively appear of record in order for certiorari to be available. *Good Shot* v. *U. S.*, 1900, 179 U.S. 87; *Mansfield, etc. R. Co.* v. *Swan, Ohio* 1884, 111 U.S. 379; *King Iron Bridge, etc. Co.* v. *Otoe County, Neb.* 1887, 120 U.S. 225; *Cameron* v. *Hodges, Tenn.* 1888, 127 U.S. 322; *Parker* v. *Ormsby, Neb.* 1891, 141 U.S. 81.

The ruling sought to be reviewed is the affirmance by the U. S. Court of Appeals for the Sixth Circuit of the District Court's dismissal of plaintiff's complaint. A review of that complaint will clearly indicate that it is devoid of any factual statement which could form the basis for federal jurisdiction. It attempts, instead, by broad sweeping generalizations, to create federal jurisdiction by rhetoric rather than by factual allegation.

This Court in *Underground Railroad Company* v. *City of New York*, 193 U.S. 416 stated at page 422:

> "If, on the face of complainants' statement of their own case, it does not appear that the suit really and substantially involved a dispute or controversy as to the effect or construction of the Constitution, on the determination of which the result depended, the Circuit Court was right (in dismissing for want of jurisdiction) and its decree must be affirmed."

With even more direct application to the allegations of the present complaint the court stated at page 430:

> "The result is that it appeared on the record that complainants possessed no contractual rights, which were impaired, or of which they were deprived and that the suit did not really and substantially involve a dispute or controversy as to the application of the Constitution."

Again in *Defiance Water Company* v. *Defiance*, 191 U.S. 184 this Court stated in its syllabus:

> "When a suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution or laws of the United States, upon determination of which the result depends, it is not a suit arising under the Constitution or laws, and it must appear on the record, by a statement in legal and logical form, such as is required in good pleadings, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction of the Constitution or some law or treaty of the United States before jurisdiction can be maintained on the ground."

CERTIORARI SHOULD BE DENIED

Inasmuch as the Petition seeks review of the ruling of the United States Court of Appeals for the Sixth Circuit wherein the District Court's dismissal of plaintiffs' complaint was affirmed we must, of necessity, look to that complaint to determine whether in its dismissal there arise such special and important considerations as to warrant the granting of certiorari. A reading of that complaint and of the District Court's characterization of it in its Memorandum Opinion and Order will quite adequately demonstrate to the Court the true nature of the controversy here presented.

The complaint itself, without question, manifests a patent failure to state a cause of action as to this respondent

or, in fact, as to any of the respondents. Nowhere in that voluminous complaint is there so much as one statement of anything which the respondents did or failed to do that would form a predicate of liability. Although repeated conclusionary references are made to supposed violations of the Petitioners' civil rights, in no instance are those references clarified or supported by factual allegation. The necessity for such a statement cannot be ignored.

> "A complaint, from which it could not be discovered what claim was intended to be made, was insufficient." (*Nicol* v. *National Savings and Trust Company*, 250 F.2d 36, cert. den. 357 U.S. 909, rehearing den. 358 U.S. 859).

From the obvious malevolence of the charges so wantonly leveled at the various Respondents one must conclude, as did the District Court, that the complaint represents "the personal vendetta of counsel . . . rather than a sincere and bona fide attempt to recover monetary damages for the plaintiffs." Although the complainants pray for a total recovery of $133,200,000.00, it is devoid of any allegation that would constitute a basis for such a prayer or indeed for damages of any kind.

Thus, the District Court, called upon to determine whether such a complaint stated a claim upon which relief could be granted, had no alternative but to find that it did not.

Although Petitioners' failure to state any claim as to this Respondent would render further analysis of the complaint academic, we feel compelled to observe that, at least as to this Respondent, it would have been impossible for them to state a claim under 42 U.S.C.A. 1983. That statute provides for redress only as to those defendants who act "under color of statute . . . of any state or territory." This Respondent, being a private corporation rather than

a governmental agency or officer, is unquestionably not among that class of persons contemplated by the statute.

"Under color of law" was defined by this Court in *Williams* v. *State,* 341 U.S. 97:

> "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law" (citing *United States* v. *Classic,* 313 U.S. 299).

The U. S. Court of Appeals for the Ninth Circuit in the case of *Schatte et al* v. *International Alliance etc. et al,* 182 F.2d 158 stated:

> "Under statute providing that every person, who, 'under color of any statute, ordinance, regulation, custom, or usage, of any state or territory,' subjects any person to deprivation of rights, privileges or immunities secured by Constitution and laws, shall be liable to party injured, reason for quoted phrase is to bring wrongful acts within the scope of state action under Fourteenth Amendment, and therefore, to be liable under the statute, employers and union who were alleged to have made certain misrepresentations would have had to act, or purport to act, on behalf of the state as state officials, or, possibly, to conspire with persons so acting.
>
> "Making representations to a state official, even in a report required by law, is not acting 'under color of law' within statute creating right of action for deprivation of rights."

The Ninth Circuit Court of Appeals denied rehearing en banc of the *Schatte* case at 183 F.2d 685. Certiorari was denied by this Court (340 U.S. 827) as was rehearing (340 U.S. 885).

Obviously the only opinions written in this Court in civil rights matters involve those cases in which certiorari

was granted and those cases do not, therefore, relate to matters analagous to that now under consideration. The circuit courts, however, have had frequent occasion to review litigation in which questions of civil rights violations were inappropriately raised.

The case of *Williams* v. *Yellow Cab Company of Pittsburgh,* 200 F.2d 302 dealing with a non-governmental defendant, gave the Third Circuit Court of Appeals the opportunity to observe:

> "The Fourteenth Amendment to the Federal Constitution and Federal Civil Rights Act, enacted to enforce such Amendment, are directed only to state action. An invasion of individuals' rights by other individuals is not within their purview."

The Court of Appeals for the Eighth Circuit, again dealing with a non-governmental corporate defendant, came to a similar conclusion in the case of *Moffett* v. *Commerce Trust Co.,* 187 F.2d 242, stating:

> "The Civil Rights Act granting protection to persons from conspiracies to deprive them of rights secured by the Constitution and laws of the United States, do not have the effect of taking into federal control the protection of private rights against invasion by individuals."

The case of *Hardyman* v. *Collins* was eventually considered by this Court and is reported at 341 U.S. 651. In that case the District Court dismissed a complaint which, unlike the present case, alleged clearly defined actions on the part of the defendant, and in doing so stated:

> "Unless act denounced as a violation of plaintiffs civil rights is in aid of state action which results in deprivation of equality, the wrong is a private wrong, such as assault, battery, trespass or the like, and not within the Civil Rights Statute.

> "Before liability under the Civil Rights Statute attaches, there must be a violation of national rights, and such violation must be by the state, one of its agencies, or persons being or claiming to be repositories of the state power."

The Court of Appeals for the Ninth Circuit reversed this dismissal by the District Court with one of three judges dissenting. (183 F.2d 308). This Court, however, reversed the Ninth Circuit Court of Appeals and affirmed the District Court's dismissal of the complaint. In the majority opinion, delivered by Justice Jackson, the case of *Shelley* v. *Kraemer*, 334 U.S. 1 is cited with the following quotation from page 13 of that opinion:

> "Since the decision of this court in the civil rights cases, 109 U.S. 3 (1883), the principle has become firmly imbedded in our constitutional law, that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the states. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful."

Justice Jackson made reference to the dissent of Judge Healy of the Ninth Circuit and, together with the majority of this Court, approved the view taken by Judge Healy and the District Court. Judge Healy's opinion contains the following language, which we believe to be uniquely applicable to the case now before the Court:

> "I need not review the allegations of the pleading thought insufficient below to confer federal jurisdiction. That task has already been performed by the trial judge. In his analysis of the factual aspects of the complaint, he has revealed this case to be the transparent sham it is when read against the actual wording of the statute. Here, as his discussion shows, a sporadic incident of transient interference with the

> exercise of a right is, by the ingenuity of counsel, dressed up in grave, constitutional attire, and pointed to as a 'deprivation' of the right."

The above language is, as we have noted, indeed uniquely applicable in the present situation. Judge Peck of the United States District Court for the Southern District of Ohio did, as did the District Court in the *Hardyman* case, reveal the case to be the transparent sham that it is.

The case of *Monroe* v. *Pape,* 365 U.S. 167 and the Circuit Court and District Court cases cited by Petitioners' are no more related to the question at hand than is Petitioners' argument.

While suppressing the temptation toward invective that is invited by Petitioners' reckless defamations, it must be said — for it is far too obvious to ignore — that Petitioners' entire case, here and in the courts below, is more than ineffectual. It is more than illogical. It is, in glaringly obvious fact, irrational beyond the point of intelligent or meaningful analysis.

This matter has unconscionably consumed the time and energies of all those whom it has touched. One judge of the District Court and three judges of the Circuit Court have taken time that should have been devoted to serious, critical questions in a sincere attempt to glean some reason from an irrational document. The time and energy of the nation's highest Court cannot be wasted in the same effort.

CONCLUSION

The question presented by the Petition is not one of great public or national interest. It is, in fact, a question that affords an obvious answer. That answer was given by the District Court and affirmed by the Circuit Court of Appeals.

Certiorari should, therefore, be denied.

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No. 994

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

SHIRELEY JEAN ESTES; LISHA DAWN ESTES; SHAWNA ANNETTE ESTES AND DAVID LAIRD ESTES,

Petitioners,

vs.

CAMDEN FIRE INSURANCE ASSOCIATION OF GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION LIMITED; STATE AUTOMOBILE MUTUAL INSURANCE COMPANY; FRANK M. GUSWEILER; STATE OF OHIO AND UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT JAMES A. RHODES GOVERNOR, STATE OF OHIO IN OPPOSITION

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JURISDICTION

Petitioner has mistaken the statutory ground upon which jurisdiction may be invoked in that 28 U.S. Code, Section 1257 (3) specifically refers to review of judgments rendered

by the highest court of a state. Review by writ of certiorari of cases in the Courts of Appeals is provided in 28 U.S. Code, Section 1254 (1).

QUESTION PRESENTED

Does dismissal by the District Court of petitioner's complaint against respondent, James A. Rhodes, Governor of the State of Ohio present a proper question for review by this Court?

STATEMENT OF THE CASE

On April 20, 1966 Petitioners filed a lengthy complaint in the United States District Court for the Southern District of Ohio, Western Division. Named as one of five parties-defendant was Respondent James A. Rhodes, Governor of the State of Ohio. (Pet. for Cert. p. 4-23). Statutory jurisdiction was claimed to exist pursuant to 42 U.S. Code Section 1983. Throughout the complaint numerous allegations were made relating to the enactment and operation of laws by and in the State of Ohio pertaining to the liability and casualty insurance business. According to the various allegations, these laws of the State of Ohio, primarily Title 39 Revised Code of Ohio, are unconstitutional because they violate the Fourteenth Amendment and permit violation of the Civil Rights Act of 1871 specifically 42 U.S. Code Section 1983. (Pet. for Cert. App. A) These laws are alleged to violate Petitioners' federal rights in the following respects; by inhibiting the right to contract freely, in that they permit the infliction of cruel and inhuman punishment, and that they encourage taxation without representation.

The District Court, upon motions filed and heard, dismissed the complaint on the ground that it failed to state a claim upon which relief could be granted. (Pet. for Cert.

App. B) The United States Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court. (Pet. for Cert. App C)

Petitioners now seek review by the Supreme Court of the United States on writ of certiorari which Respondent opposes herein.

ARGUMENT

A. No Conflict of Authority

Petitioners have not cited any authority or even argued that the decision they seek to have reviewed is in conflict with any decision of another Court of Appeals or this Court on the same matter.

Neither have Petitioners argued that an important state question has been decided in a way which is inconsistent or in conflict with applicable state law.

B. No Important Issues for Consideration

The only issue in the case is whether Petitioners' complaint stated a claim upon which relief could be granted. The District Court and the Circuit Court of Appeals determined that it did not. However, such determination was obviously based upon fatal deficiencies of the complaint itself and not because the acts alleged were also in clear violation of state or local law as in *Monroe* v. *Pape*, 365 U.S. 167, 5 L. Ed. 2d 492, 81 Supreme Court 473.

In the instant case no actionable mischief or misconduct is even alleged which could be attributed to Respondent. The compaint consists primarily of scurrilous charges and conclusions. The determination that such allegations failed to state a claim simply cannot be ballooned by Petitioners into a substantial, novel or important question of great public moment worthy of this Court's consideration on review.

C. **There Is No Need to Invoke The Court's Power of Supervision**

A cursory reading of the complaint and the decision of the District Court compels the conclusion that dismissal and the subsequent affirmance was proper. Even though the District Court did comment on charges made by Petitioners in various memoranda, it would not appear under the circumstances that this constitutes a substantial departure from the usual and accepted course of judicial proceedings.

The District Judge also concluded that "this entire action represents the personal vendetta of counsel for the plaintiffs against the insurance industry in general and against the named defendant companies in particular, and against the defendant Common Pleas Judge, rather than a sincere and bona fide attempt to recover monetary damages for plaintiffs." (Pet. for Cert. p. 36). That this clearly is an accurate assessment of the situation is evidenced by the complaint and corroborated by petitioners' statements in the "Reasons for Granting the Writ.". (Pet. for Cert. p. 4-29)

Undoubtedly there has been a departure from the accepted and usual course of judicial proceedings but such is attributable to Petitioners and not to the District Court, the Circuit Court or any of the Respondents.

D. **The Suit Is Actually One Against The State of Ohio and Was Properly Dismissed**

With regard to this Respondent there is an additional reason why the writ should be denied. The allegations against the named Respondent are actually directed against State of Ohio which is not subject to suit. The doctrine that states and its agencies are not subject to suit has often been applied by Federal Courts in actions under the Civil Rights Act, particularly 42 U.S. Code, Section 1983 where

it is consistently held that a state or municipality is not a "person" within the ambit of Section 1983. *Monroe* v. *Pape*, 365 U.S. 167 (1961), *Sires* v. *Cole*, (9th Cir. 1963), 320 F 2d 877, *Hewitt* v. *City of Jacksonville*, 188 F 2d 423, (5th Cir. 1951) cert. denied 342 U.S. 835, *Clark* v. *State of Washington*, 366 F 2d 678 (9th Cir. 1966), *Williford* v. *People of California*, 352 F 2d 474 (9th Cir. 1967).

CONCLUSION

Because Petitioners have shown no special or important reasons for granting the writ, Respondent submits that the Petition for Certiorari should be denied.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 994

SHIRELEY JEAN ESTES; LISHA DAWN ESTES; SHAWNA ANNETTE ESTES AND DAVID LAIRD ESTES, PETITIONERS

v.

CAMDEN FIRE INSURANCE ASSOCIATION OF GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION LIMITED; STATE AUTOMOBILE MUTUAL INSURANCE COMPANY; FRANK M. GUSWEILER; STATE OF OHIO AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. This action apparently stemmed from two automobile accidents in which petitioner Shireley Jean Estes was injured as the result of the alleged negligence of individuals to whom the respondent insurance

companies had issued automobile liability policies. Insofar as the United States is alleged to be involved, the gravamen of the complaint appears to be that the Attorney General has been abiding by the Ferguson-McCarran Act, 15 U.S.C. 1011-1015, which leaves the regulation of the insurance industry to the individual states.[1] Petitioners contend that this Act is unconstitutional because it stands "in the path of proper control and supervision of the interstate insurance business which can only be governed constitutionally by the Federal Government * * *" (Pet. 17). The action was dismissed by the district court as to all defendants for failure to state a claim on which relief could be granted (Pet. App. B), and the court of appeals affirmed *per curiam* (Pet. App. C).

2. There is no warrant for further review of petitioners' claims against the United States. Since at

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[1] The Act provides in part:

§ 1011. *Declaration of policy.*

Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

§ 1012. *Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948.*

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

* * * *

least *Paul* v. *Virginia*, 8 Wall. 168, it has been consistently recognized that the regulation of insurance is a permissible state activity. *Wilburn Boat Co.* v. *Fireman's Insurance Co.*, 348 U.S. 310. Although the interstate aspects of the insurance business could be subjected to federal regulation under the Commerce Clause (*United States* v. *South-Eastern Underwriters Assn.*, 322 U.S. 533), there is obviously no constitutional requirement that Congress impose such regulation.

Respectfully submitted,

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1968.

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